

Appl. No. 10/730,990
Amdt. Dated May 2, 2005
Reply to Office action of November 2, 2004

REMARKS/ARUGMENTS

Claims 1-7, and 9-18 remain in this application. Claim 8 has been canceled.

Claim 1 has been amended to add an additional feature from claim 8. Claim 1 has also been amended to add an additional feature that the apparatus is free standing or mountable. Support for this feature is found, amongst other places, in paragraph 0012, lines 2-4. One further feature was added to claim 1 to specify that the apparatus marks a value associated with one or more events or experiences of an individual. Support for this feature is found, amongst other places, in the Specification at paragraph 9, line 2.

With respect to the cited reference of Gaston-Johansson, namely US Patent No. 5,692,500 it is submitted that the present invention is patentably distinguishable from this cited reference. The Gaston reference teaches a hand held tool for the assessment of patient pain which is an assessment of a subjective personal experience that the patient is experiencing and for which the assessor, the medical professional, seeks guidance on its severity. The Gaston device provides a list of descriptors naming different types of pain using a wide variety of terminology (see column 4 lines 36-43). Gaston provides a numerical 'rank' to each descriptor (column 4 line 43, for example). Several descriptors are assigned the same 'rank' and ranks range from 1 to 5 and are always positive numbers. It is stated in the Gaston reference that a determination of a 'pain ranking' is made by identifying the total number of words chosen and also providing a summation of the numerical rankings assigned to each descriptor.

The present invention does not use a ranking system that only increases in value as the numerical indices are summed, such as is taught by Gaston. The present invention provides for both increases and decreases in the value assessment based on a life experience or life event of that individual (see for example the specification of the present application at paragraph 0039 line 7). These life events or experiences are factual events that occur in the life of the individual and are not subjective events such as pain. The values determined by the interplay between the manual and the apparatus provide a physical mechanism for a cumulative assessment over a period of time and not a single assessment at one point in time as taught in the Gaston reference.

Gaston teaches a device which facilitates feedback from a patient and the results are summed in a *single value*, by the medical advisor, in order to assess a subjective feeling of the

Appl. No. 10/730,990
Amdt. Dated May 2, 2005
Reply to Office action of November 2, 2004

patient. In the present invention, a *cumulative* assessment leads to the cognitive awareness experienced by the individual. It is the individual who makes the assessment and the tools of the manual and the apparatus in combination provide a 'real and authentic' means to measure the occurrence of certain life events and/or experiences that are not subjective events. It is a single sum that Gaston determines or calculates based upon subjective feelings of pain existing within the user at the moment of use of the device. In contrast the present invention provides a cognitive awareness for the user based upon a series of observations that arise from specific events and experiences that occur in fact in the person's life.

It is further submitted, that the Gaston device could not be worked for the present invention. Gaston provides a hand held card which the person physically manipulates to provide a collective feedback at one point in time and one skilled in the art would not use the device of Gaston for the cumulative assessment provided by way of the applicant's present invention.

Examiner discusses, in the examiner's report, only the apparatus features of the present invention. The method claims 13 to 18 are not specifically addressed in detail by the examiner. It is submitted that that method claims 13-18 are not rendered obvious by the Gaston reference and indeed are patentably distinguishable on several grounds. For example the first step of the method as claimed in claim 13 states "setting said indicator to an initial position on said device". The Gaston reference device does not have an initial position.

The present invention, as claimed in claim 13 for example, provides "said individual referring to said manual". Gaston specifically hides the rankings from the users of the device described in the '500 patent. The feedback in Gaston is provided to the medical practitioner. The feedback in the present invention is provided to the individual. Indeed in Gaston it is essential that the user not know the rankings or assessment method so as not to affect the outcome of the assessment.

The user of the Gaston system is provided with a list specific terms and the user then selects from these terms. In the present invention the individual user of the device experiences a life event or experience and then this event is matched to descriptions in the associated manual. Gaston incorporates a dual scale mechanism to collect as much data at one time as possible (see

Appl. No. 10/730,990
Amdt. Dated May 2, 2005
Reply to Office action of November 2, 2004

for example column 6 lines 39 and 56, for example). The present invention records a value associated with one or more events or experiences. As stated in existing method claim 13 the indicator is re-positioned as each event occurs and these steps are repeated (see for example claim 13 steps e), f), g) and h)) thereby resulting in a cumulative score. This is not possible with the device taught in Gaston.

With respect, it is submitted that the manual and the measurement device are together the apparatus as claimed in the present invention. The descriptions in the manual are used by the individual user to assess the event or experience and is more than mere support by the substrate for the printed matter. There is an interactive functional relationship between these two components of the claimed apparatus.

It is respectfully submitted that Gaston teaches a different device for a different purpose and it is submitted for these reasons that claims 1 to 18 of the present invention, as amended, are not rendered unpatentable under 35 USC 103(a) as being unpatentable over US Patent Number 5,692,500 A.

Replacement page 15 is enclosed having thereon amended claim 1, unmarked.

Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Respectfully submitted,

Cynthia J. Ledgley
Barrister & Solicitor, Patent and Trade-mark Agent

By 
Cynthia J. Ledgley
Reg. No. 34533
Tel.: (416) 703-4004